REMARKS

Reconsideration and allowance of the above-identified application are respectfully requested. Claims 1-6, 8-26 and 29-33 are now pending, wherein claims 1, 23, 30 and 31 are amended, and claims 27 and 28 are canceled.

Initially, the Applicants would like to thank Examiner Haile and SPE Moe for their time and courtesy during the personal interview conducted with the undersigned on April 1, 2009. The following summarizes the issues discussed during the personal interview.

Claims 1-6, 8-22 and 30-33 are rejected for indefiniteness under 35 U.S.C. § 112, second paragraph. Claim 1 is amended in the manner described in the Office Action, and accordingly this rejection should be withdrawn.

Claims 1-6 and 8-33 are rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Although this ground of rejection is respectfully traversed, independent claims 1, 23 and 30 are amended to tie the claims to another statutory category, i.e., an apparatus. Support for the amendments to claims 1 and 23 can be found at least at paragraphs 0016-0020 of the present application. Support for the amendment to claim 30 can be found at least at paragraph 0017, which describes storage media "such as electrically erasable programmable read-only memory (EEPROM), compact disk ROM (CD-ROM), dynamic random access memory (DRAM)". Accordingly, withdrawal of this rejection is respectfully requested.

Claims 1-8, 11, 13, 22 and 30-33 are rejected under 35 U.S.C. § 102(e) for anticipation by U.S. Patent Application Publication No. 2003/0135573 to Taylor ("Taylor"). This ground of rejection is respectfully traversed.

As discussed during the personal interview, Taylor does not anticipate claim 1 because Taylor does not disclose that the determination of whether to employ stateless routing is based on stored historical data for a destination host that "is independent of the incoming data."

Taylor discloses a number of alternatives for determining whether to store a message in volatile or non-volatile memory. For example, with respect to Figure 3B of Taylor (reproduced below), when a message has not been successfully received (step 312), then the message is stored in non-volatile memory.
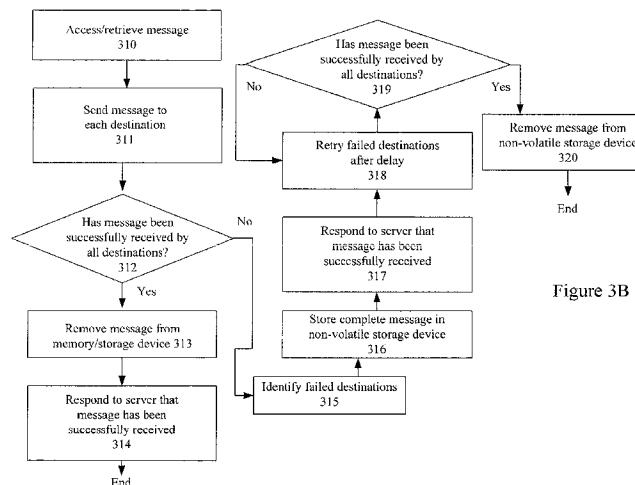

Figure 3B

In contrast to determining whether to store a message based on whether the message has been successfully delivered, Applicants' claim 1 recites that the decision of whether to employ stateless routing is based on stored historical data that "is independent of the incoming data."

In the Figure 4 embodiment of Taylor (reproduced below), the decision of whether to employ fast path message transfer agents (MTA) is based on "predetermined conditions", which Taylor discloses "relate to the configuration of the server".[1] In contrast, the stored historical data of Applicants' claim 1 is "for a destination host".
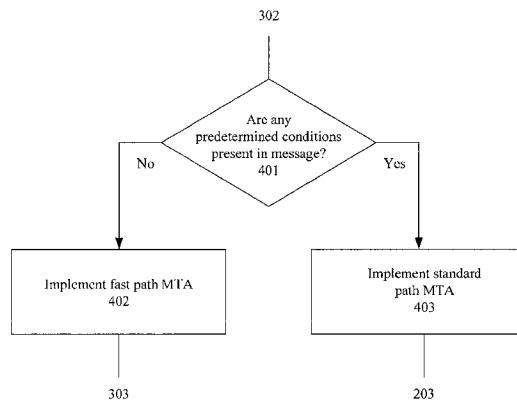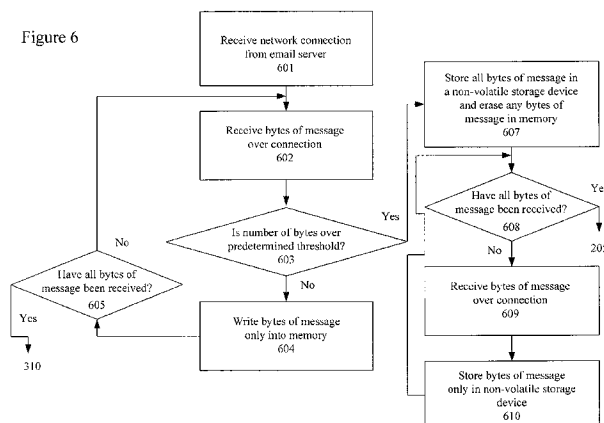

Figure 4

In the Figure 6 embodiment of Taylor (reproduced below), the decision of whether to store a message in non-volatile or volatile memory is based on the size of the message itself, and it is not based on historical data that "is independent of the incoming data."

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[1] Paragraph 0033.

Because the embodiments of Taylor decide whether to store messages in volatile or non-volatile memory either based on characteristics of the message itself or conditions of a server that is transferring the message, Taylor does not disclose that the determination that stateless routing is to be employed for the *incoming data* is based on the stored historical data for the destination host associated with the *incoming data,* where "the stored historical data is independent of the incoming data."

Because Taylor does not disclose all of the elements of claim 1, Taylor does not anticipate this claim. Claim 30 recites similar elements to those discussed above with regard to claim 1, and is not anticipated by Taylor for similar reasons. Claims 2-6, 8, 11, 13, 22 and 31-33 are patentably distinguishable over Taylor at least by virtue of their dependency. Accordingly, the rejection of claims 1-8, 11, 13, 22 and 30-33 for anticipation by Taylor should be withdrawn.

Claims 20, 21, 23-25 and 29 are rejected under 35 U.S.C. § 103(a) for obviousness in view of the combination of Taylor and Patent No. 6,483,834 to Salisbury ("Salisbury"). Claim 28 is rejected under 35 U.S.C. § 103(a) for obviousness in view of the combination of Taylor and Salisbury and Hannel. These grounds of rejection are respectfully traversed.

The combination of Taylor and Salisbury does not render claim 23 obvious because the combination does not disclose or suggest "determining that stateless routing of the message is to be employed based on the historical data and the control data."

The Office Action relies upon the counting of the number of bytes of Taylor as corresponding to the historical data, and states that the control data is inherent in Taylor. First, as discussed above, Taylor discloses determining whether to save a message in non-volatile memory either based on characteristics of the message itself or conditions of a server that is transferring the message. Thus, Taylor does not disclose or suggest using historical data for a destination host to determine that stateless routing is to be employed.

Second, Taylor at most discloses using the number of bytes of a message and whether a message has been successfully transmitted. Taylor does not disclose or suggest that the inherent control data is used for determining that stateless routing is to be employed.

Finally, claim 23 is amended to include the elements of claim 28, and accordingly now recites that the determination that stateless routing is to be employed "is based on a generated probability decision representative of whether stateless routing is to be employed."

The Office Action relies upon Hannel for the disclosure of this element of claim 28. Hannel discloses testing stateful network communication devices in which information "received on the stateful connections is used to alter test conditions on the stateless connections."[2] Hannel does not, however, disclose or suggest that a determination <u>of whether to perform</u> stateless routing is based on a generated probability decision.

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[2] Abstract.

Nevertheless, the Office Action cites column 7, lines 52-59 of Hannel for the claimed generated probability decision. This section of Hannel discloses an "exemplary measurement that a user may want to determine in testing a device or a network", but does not disclose or suggest that a determination <u>of whether to perform</u> stateless routing is based on a generated probability decision.

Salisbury is cited for other elements of claim 23, but does not remedy the above-identified deficiencies of Taylor and Hannel. Accordingly, the combination of Taylor, Salisbury and Hannel does not render claim 23 obvious.

Claims 20, 21, 24, 25 and 29 are patentably distinguishable at least by virtue of their dependency. Accordingly, the rejection of claims 20, 21, 23-25 and 29 for obviousness should be withdrawn.

Claims 9, 10, 18 and 19 are rejected under 35 U.S.C. § 103(a) for obviousness in view of the combination of Taylor and U.S. Patent No. 7,194,535 to Hannel et al. ("Hannel"). Claim 12 is rejected under 35 U.S.C. § 103(a) for obviousness in view of the combination of Taylor and U.S. Patent No. 6,721,315 to Xiong et al. ("Xiong"). Claims 14 and 15 are rejected under 35 U.S.C. § 103(a) for obviousness in view of the combination of Taylor and U.S. Patent Application Publication No. 2003/0074413 to Nielsen et al. ("Nielsen"). Claims 16 and 17 are rejected under 35 U.S.C. § 103(a) for obviousness in view of the combination of Taylor and U.S. Patent No. 3,870,828 to Saliga ("Saliga"). Claim 26 is rejected under 35 U.S.C. § 103(a) for obviousness in view of the combination of Taylor, Salisbury and Nielsen. Claim 27 is rejected under 35 U.S.C. § 103(a) for

obviousness in view of the combination of Taylor and Salisbury and Saliga. These grounds of rejection are respectfully traversed.

Claims 9, 10, 12, 14-19, 26 and 27 variously depend from independent claims 1, 23 and 30. Accordingly, these claims are patentably distinguishable over the current grounds of rejection at least by virtue of their dependency.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #101610.55983US).

Respectfully submitted,

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